

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV Inc.		
	DEFENDANT(S) INVOLVED IN JUDGMENT Ginsey Industries, Inc.		
CASE INFO	COURT DOCKET NUMBER 19STCV23409		COURT NAME SUPERIOR COURT OF CA, Los Angeles Co
	SHORT CASE NAME Shefa LMV, Inc. v. Ginsey Industries, Inc.		
REPORT INFO	INJUNCTIVE RELIEF COMPLIANT PRODUCTS AND WARNINGS		
	PAYMENT: CIVIL PENALTY \$4,000	PAYMENT: ATTORNEYS FEES \$19,750	PAYMENT: OTHER 0
	DATE SUBMITTED TO COURT 10 / 25 / 2019	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 8 / 20 / 2019
	COPY OF JUDGMENT MUST BE ATTACHED		
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum		
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER ((818)) 809-2199
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER ((424)) 243-7698
	CITY Van Nuys	STATE ZIP CA 91406-0000	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the judgment to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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FILED
Superior Court of California
County of Los Angeles

DEC 12 2019

Sherri R. Carter, Executive Officer/Clerk
By Michael Tran, Deputy

Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

GINSEY INDUSTRIES, INC.,

Defendant.

) Case No. 19STCV23409

) ~~[PROPOSED]~~ **CONSENT JUDGMENT**
) **AS TO GINSEY INDUSTRIES, INC.**

) Action Filed: July 3, 2019

[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT
GINSEY INDUSTRIES, INC.

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
4 Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and Ginsey Industries, Inc. (“**Defendant**,” with Shefa and
5 **Defendant** individually referred to as a “**Party**” and collectively as the “**Parties**”).

6 **1.2 Plaintiff**

7 Shefa is a public benefit, non-profit corporation that seeks to promote awareness of
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Settling Defendant**

11 Defendant employs ten (10) or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code §25249.6 *et seq.* (“**Proposition 65**”).

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are plastic organizer products, including,
16 but not limited to, UPC: 047968481175 Arm & Hammer Collapsible Shoe Box, UPC:
17 047968481199 Arm & Hammer Sweater Organizer, and UPC: 047968481106 Arm & Hammer 12-
18 Compartment Underbed Organizer, that are manufactured, sold, or distributed for sale in California
19 by Defendant that contain Di-[2-Ethylhexyl] Phthalate (“**DEHP**”) (collectively, the “**Covered**
20 **Products**”).

21 **1.5 General Allegations**

22 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state
23 of California, the Covered Products without first providing a clear and reasonable warning required
24 by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a
25 chemical known to the state to cause cancer or reproductive toxicity.

26 **1.6 Notice of Violation**

27 On February 1, 2019, Shefa served Defendant and the requisite public enforcement agencies
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12/13/2019

1 with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated Proposition 65
2 when it failed to warn its customers and consumers in California that the Covered Products expose
3 users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is
4 diligently prosecuting the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On July 3, 2019, Shefa filed the instant complaint in the Superior Court in and for the
7 County of Los Angeles against Defendant and DOES 1-100, alleging violations of California
8 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products
9 sold in the State of California (the “**Complaint**”).

10 **1.8 No Admission**

11 Defendant denies the material, factual, and legal allegations contained in the Notice and
12 Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in
13 California, including the Covered Products, have been, and are, in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
15 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
16 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion
17 of law, issue of law, or violation of law, the same being specifically denied by Defendant. This
18 section shall not, however, diminish or otherwise affect Defendant’s obligations, responsibilities,
19 and duties under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
23 County of Alameda, the Defendant agrees that it employs or has employed ten or more persons
24 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
25 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
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1 Consent Judgment is approved and entered by the Court.

2 **2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS**

3 **2.1 Reformulation Standards**

4 As of the Effective Date, Defendant shall not manufacture for sale in California any Covered
5 Products unless such Covered Products contain DEHP in concentrations less than or equal to 1000
6 parts per million (“ppm”) when analyzed pursuant to U.S. Environmental Protection Agency-
7 approved testing methodologies or any other scientifically reliable methodology for determining the
8 concentration of DEHP in the Covered Products.

9 **2.2 Warning Standards**

10 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent it
11 ships or sells Covered Products in California that do not meet the reformulation standards set forth
12 above in Section 2.1, Defendant will provide warnings on such Covered Products that comply with
13 Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that
14 they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.
15 The Parties agree that the warning set forth below shall constitute compliance with Proposition 65
16 with respect to any Covered Products that are not reformulated:

17 (a) the text, **“WARNING: This product can expose you to chemicals including**
18 **DEHP, which is known to the State of California to cause cancer and birth defects or**
19 **other reproductive harm. For more information go to www.P65Warnings.ca.gov.”**
20 accompanied by and placed to the right of a symbol consisting of a black exclamation point
21 in a yellow equilateral triangle with a bold black outline sized to be no smaller than the
22 word, “WARNING” as provided by regulations adopted on or about August 30, 2016; or

23 (b) the text, **“WARNING Cancer and Reproductive Harm -**
24 **www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting
25 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
26 to be no smaller than the word, “WARNING” as provided by regulations adopted on or
27

1 about August 30, 2016.

2 The triangular warning symbol specified in Section 2.2(a) and 2.2(b) may be printed in black and
3 white if the Covered Product label is not printed using the color yellow.

4 **2.3 Covered Products in the Stream of Commerce.**

5 Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the
6 Effective Date, shall not be subject to the requirements of Sections 2.1 or 2.2.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Payment from Defendant.** Within fifteen (15) business days following the
9 Effective Date, Defendant shall make the Total Settlement Payment of **\$23,750.00**.

10 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
11 separate checks made payable and allocated as follows:

12 **3.2.1 Civil Penalty.** Defendant shall pay \$4,000.00 as a civil penalty
13 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
14 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
15 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
16 OEHHA portion of the civil penalty payment in the amount of \$3,000.00 shall be made payable to
17 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
18 delivered as follows:

19 For United States Postal Service Delivery:

20 Attn: Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 P.O. Box 4010, MS #19B
24 Sacramento, CA 95812-4010

12/13/2019

1 and licensees, and each of their owners, purchasers, officers, directors, attorneys, representatives,
2 shareholders, agents, employees, and sister and parent entities, including but not limited to Bed
3 Bath & Beyond, Inc., (collectively “**Downstream Releasees**”), for all claims that have been
4 asserted for, could have been asserted for, or that arise out of alleged or actual violations of
5 Proposition 65 or its implementing regulations for alleged exposures to DEHP in Covered Products
6 prior to and including the Effective Date. Defendant, Releasees and Downstream Releasees are
7 hereby collectively referred to as the “**Released Parties.**” Shefa, on behalf of itself and in the
8 public interest, hereby discharges and releases Released Parties from any and all claims, including,
9 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
10 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, fees
11 of attorneys, experts, and others) of any nature whatsoever, whether known or unknown, fixed or
12 contingent, asserted for, that could have been asserted for, or that arise out of alleged exposures to
13 DEHP from Covered Products sold, manufactured or distributed by any Released Party in
14 California, or the failure of any Released Party to provide clear, accurate and reasonable warnings
15 under Proposition 65, Business and Professions Code §17200, et seq., or any other applicable law
16 about exposure to DEHP, predicated or based on a violation of Proposition 65, arising from the sale,
17 distribution, or use of any Covered Products sold, manufactured or distributed by any Released
18 Party in California (collectively “**Claims**”). Compliance with the Consent Judgment by any
19 Released Party shall constitute compliance with Proposition 65 by all Released Parties with respect
20 to the presence of DEHP in the Covered Products on and after the Effective Date. Plaintiff agrees
21 that any and all Claims are resolved with prejudice by this Consent Judgment. The release in this
22 Section 4.1 applies to all Covered Products that Defendant manufactured, distributed, or sold prior
23 to the Effective Date, regardless of the date any other Released Party may distribute or sell the
24 Covered Products.

25 26 **4.2 Shefa’s Individual Release of Claims**

27 In further consideration of the promises and agreements herein contained, Shefa, on its own
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1 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
2 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
3 legal action, and discharges and releases the Released Parties from any and all Claims arising under
4 Proposition 65 for unwarned exposures to DEHP from Covered Products manufactured, sold, or
5 distributed for sale by Defendant prior to the Effective Date. The releases in Section 4.2 are
6 provided in Shefa's individual capacity and are not releases on behalf of the public.

7 **4.3 Defendant's Release of Shefa**

8 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
9 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
10 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
11 by Shefa and its attorneys and other representatives in the course of investigating the claims set
12 forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter with
13 respect to the Covered Products.

14 **4.4 Release of Unknown Claims**

15 It is possible that other claims not known to the Parties arising out of the facts contained in
16 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
17 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment
18 is expressly intended to cover and include all such claims through and including the Effective Date,
19 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1
20 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in
21 doing so waives California Civil Code § 1542 (and any other state, federal, or international law of
22 similar import), which reads as follows:

23 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
24 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
25 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
26 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
27 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
28 **PARTY.**

12/13/2019

1 Shefa understands and acknowledges that the significance and consequence of this waiver of
2 California Civil Code § 1542 is that even if Shefa suffers future damages arising out of or resulting
3 from, or related directly or indirectly to, in whole or in part, any claims arising from any violation of
4 Proposition 65 or any other statutory or common law regarding the Covered Products, including but
5 not limited to any actual or alleged exposure to, or failure to warn with respect to exposure to, the
6 Covered Products, Shefa will not be able to make any claim for those damages, penalties or other
7 relief against the Released Parties.

8 **5. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court.

10 **6. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of California
12 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
13 rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant
14 may provide written notice to Shefa of any asserted change in the law, and with the exception of
15 Sections 3.1 and 3.2 above, shall have no further obligations pursuant to this Consent Judgment,
16 with respect to, and to the extent that, the Covered Products are so affected. None of the terms of
17 this Consent Judgment shall have any application to Covered Products sold outside of the State of
18 California.

19 **7. NOTICE**

20 Unless specified herein, all correspondence and notices required to be provided pursuant to
21 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
22 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any
23 Party by the other at the following addresses:

24 To Defendant:

25 Jeffrey M. Goldman, Esq.
26 Pepper Hamilton LLP
27 4 Park Plaza Suite 1200
Irvine, California 92614

To Shefa:

Daniel N. Greenbaum
Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Ave., Suite 320
Van Nuys, CA 91406

1 With a copy to:

2 AnnMarie Sanford, Esq.
3 Pepper Hamilton LLP
4 Suite 1800 | 4000 Town Center
5 Southfield, Michigan 48075-1505

6 Any Party may, from time to time, specify in writing to the other Party a change of address to which
7 all notices and other communications shall be sent.

8 **8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

9 This Consent Judgment may be executed in counterparts, and by facsimile or portable
10 document format (PDF) signature, each of which shall be deemed an original, and all of which,
11 when taken together, shall constitute one and the same document.

12 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

13 Plaintiff agrees to comply with the reporting form requirements referenced in California
14 Health & Safety Code § 25249.7(f).

15 **10. POST EXECUTION ACTIVITIES**

16 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
17 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.
18 Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this
19 Consent Judgment to the Court with a motion seeking Court approval.

20 **11. MODIFICATION**

21 This Consent Judgment may only be modified by a written instrument executed by the Party
22 or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion
23 to modify shall be served on all Parties and the Office of the Attorney General.

24 **12. DISPUTE RESOLUTION**

25 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
26 Shefa shall provide notice to Defendant. Prior to bringing any action to enforce any requirement of
27 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
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1 other party with written notice of the grounds for such allegation together with all supporting
2 information as well as a complete demand for the relief sought. The Parties shall then meet and
3 confer regarding the basis for the allegation to resolve the matter informally, including providing
4 the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure
5 any alleged violation. Should such attempt at informal resolution fail, the party alleging a violation
6 may file its lawsuit seeking the proposed relief.

7 **13. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood, and agree to all of the terms and conditions of this
10 Consent Judgment.

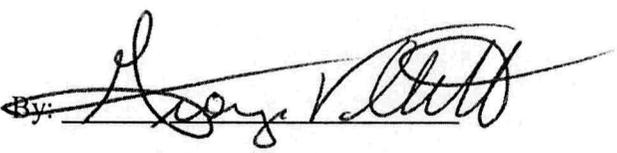
12 AGREED TO:

AGREED TO:

13
14 Date: 8/15/2019

Date: 8/8/2019

15
16
17 By: 
18 SHEFA LMV, INC.

By: 
GINSEY INDUSTRIES, INC.

12/13/2019

1 **[PROPOSED] JUDGMENT**

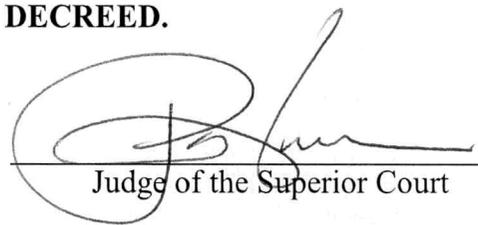
2 Please note that on _____, 2019 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff")
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to
4 Defendant Ginsey Industries, Inc. came for hearing before this Court in Department __, the
5 Honorable _____ presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant
6 did [not] appear.

7 After full consideration of the points and authorities and related pleadings submitted, the
8 Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code
9 §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following
10 findings pursuant to Health & Safety Code § 25249.7(f)(4):

- 11 a. The injunctive relief required by the Settlement Agreement complies with Health &
- 12 Safety Code § 25249.7;
- 13 b. The reimbursement of fees and costs to be paid pursuant to the Settlement
- 14 Agreement is reasonable under California law; and
- 15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

16
17 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

18
19 12/12/19
20 Date

21 
22 Judge of the Superior Court

23 **Judge Patricia Nieto**

12/13/2019